Additional documents attached

(Rev. 06/05) Judgment in a Criminal Case Sheet I - D. Massachusetts - 10/05

# UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

MICHAEL BERGDOLL

Case Number:	3	04	CR	30046	_	002	- IV	ſΑ	P

USM Number: 90828-038

Defendant's Attorney

THOMAS BUTTERS, ESQ

<u> </u>									
THE DEFEND.  pleaded guilty to		4/06							
pleaded nolo con which was accep	tendere to count(s) ted by the court.								
was found guilty after a plea of no									
The defendant is ad	judicated guilty of these offenses:	Additional Counts - See	continuation page						
Title & Section	Nature of Offense	Offense Ender	d Count						
8:1343 8:1343 8:1343 8:1956(h) & 1957	WIRE FRAUD WIRE FRAUD WIRE FRAUD CONSPIRACY TO LAUNDER MONE	09/23/99 05/30/00 10/30/00 Y 05/31/02	5S 29S 43S 69S						
	nt is sentenced as provided in pages 2 through	of this judgment. The sentence i	s imposed pursuant to						
The defendant ha	as been found not guilty on count(s)								
Count(s)  23s:27s, It is ordere or mailing address u the defendant must	Count(s)  1S,2S,9S,10S,13S,17S,21S,23c is are dismissed on the motion of the United States.  23s.27s,30s-32s,34s39s,45s,49s-51s,57s & cts charged in original indictment it is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.  01/17/07								
	•	Vucley & Pou	88						
		Signature of Judge MICHAEL A. PONSOR							
		Name and Title of Judge  /- 2 4 - 0 7							
		Date							

**⊗**AO 245B(05-MΛ)

(Rev. 06/05) Judgment in a Criminal Case Sheet 2 - D. Massachusetts - 10/05

DEFENDANT: MICHAEL BERGDOLL	Judgment — Page of
DEFENDANT: MICHAEL BERGDULL CASE NUMBER: 3 04 CR 30046 - 002 - MAP	
IMPRISONMENT	
The defendant is hereby committed to the custody of the United States Bureau of Prototal term of:  33 month(s)	risons to be imprisoned for a
TO CONSIST OF TERMS OF 33 MOS ON EA. CT, TO BE SERVED CANOTHER	CONCURRENTLY W/ONE
The court makes the following recommendations to the Bureau of Prisons:	
DEFENDANT TO BE DESIGNATED TO A FEDERAL PRISON CAM RESIDENCE WHICH HAS A MEDICAL COMPONENT THAT CAN MEDICAL CONDITION  The defendant is remanded to the custody of the United States Marshal.	
The defendant shall surrender to the United States Marshal for this district:  at a.m p.m. on as notified by the United States Marshal.	
The defendant shall surrender for service of sentence at the institution designated by before 2 p.m. on 02/28/07.	y the Bureau of Prisons:
as notified by the United States Marshal.	
as notified by the Probation or Pretrial Services Office.	
RETURN	
I have executed this judgment as follows:	
Defendant delivered on to	
a, with a certified copy oΓ this judgment.	
	UNITED STATES MARSHAL
By	

DEPUTY UNITED STATES MARSHAL

SAO 245B(05-MA)

(Rev. 06/05) Judgment in a Criminal Case Sheet 3 - D. Massaehusetts - 10/05

		Judgment—Page	of
DEFENDANT:	MICHAEL BERGDOLL		··
CASE NITIMBED.	3 04 CR 30046 - 002 - MAP		

SUPERVISED RELEASE

See continuation page

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

3 year(s)

TO CONSIST OF TERMS OF 3 YRS ON EA. CT TO BE SERVED CONCURRENTLY W/ONE ANOTHER

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 tests per year, as directed by the probation officer.

	,
	The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
	The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
<b>✓</b>	The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
	The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
	The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)
	If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

#### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

♠ AO 245B(05-MA)

(Rev. 06/05) Judgment in a Criminal Case Sheet 4A - Continuation Page - Supervised Release/Probation -10/05

DEFENDANT: MICHAEL BERGDOLL

CASE NUMBER: 3 04 CR 30046 - 002 - MAP

Judgment—Page \_\_\_\_\_ of \_\_\_\_

# ADDITIONAL ✓ SUPERVISED RELEASE ☐ PROBATION TERMS

PROHIBITED FROM INCURRING NEW CREDIT CHARGES OR OPENING ADDITIONAL LINES OF CREDIT W/O APPROVAL OF PROBATION WHILE ANY FINANCIAL OBLIGATION REMAINS OUTSTANDING

PROVIDE PROBATION W/ANY REQUESTED FINANCIAL INFORMATION, WHICH MAY BE SHARED WITH FINANCIAL LITIGATION UNIT OF U.S. ATTORNEY'S OFFICE

Continuation of Conditions of Supervised Release Probation

Sheet 5 - D. Massachusetts - 10/05 Judgment — Page \_ \_\_\_\_ of MICHAEL BERGDOLL **DEFENDANT:** CASE NUMBER: 3 04 CR 30046 - 002 - MAP CRIMINAL MONETARY PENALTIES The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6. <u>Assessment</u> **TOTALS** \$ \$400.00 \$318,331.00 The determination of restitution is deferred until

An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination. The defendant must make restitution (including community restitution) to the following payees in the amount listed below. If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid. Name of Payee Total Loss\* Restitution Ordered Priority or Percentage SEE NEXT PAGE \$318,331.00 400,000 to 1,000,000 See Continuation Page TOTALS Restitution amount ordered pursuant to plea agreement \$ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g). The court determined that the defendant does not have the ability to pay interest and it is ordered that:

restitution is modified as follows:

the interest requirement is waived for the fine restitution.

the interest requirement for the

<sup>\*</sup> Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

# **Restitution:**

Victim	Amount	<u>Victim</u>	<u>A</u>	<u>mount</u>
Bank of America (Equicredit Corporation) Attn: Richard McCarthy, Esq. C/O Edwards and Agnell 101 Federal Street Boston, MA 02210	\$300,000	Omayra Santos 28 Brookline Avenue, Apt. #2 Springfield, MA 01107	\$	10,000
Onell Agueda 137 Florence Street Springfield, MA 01105	\$ 8,331	Total =	<b>- \$</b>	318,331

Any payment made, that is not payment in full, shall be divided proportionately among the parties named. The defendant's restitution obligation shall not be affected by any payments made by other defendants in this matter.

The restitution shall be paid in full within twelve months of the date of disposition, January 17, 2007.

Payments shall be made to the Clerk, U.S. District Court, for transfer to the victims.

The defendant shall notify the United States Attorney for this district within 30 days of any change of mailing or residence address that occurs while any portion of the restitution remains unpaid.

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♠AO 245B(05-MA)

(Rev 06/05) Judgment in a Criminal Case Sheet 6 - D. Massachusetts - 10/05

#### MICHAEL BERGDOLL **DEFENDANT:**

CASE NUMBER: 3 04 CR 30046 - 002 - MAP

## SCHEDULE OF PAYMENTS

Hav	ving assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:
A	Lump sum payment of \$ due immediately, balance due
	not later than, or F below; or
В	Payment to begin immediately (may be combined with C, D, or F below); or
C	Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after the date of this judgment; or
D	Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
E	Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
F	Special instructions regarding the payment of criminal monetary penalties:
	ASSESSMENT FEE DUE IMMEDIATELY, RESTITUTION TO BE PAID IN FULL W/I 12 MOS OF THE DATE OF DISPOSITION HELD ON 1/17/07
	less the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during perisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial sponsibility Program, are made to the clerk of the court.
	Joint and Several  See Continuation Page
	Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
	The defendant shall pay the cost of prosecution.
Г	The defendant shall pay the following court cost(s):
	The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Judgment - Page

of

AO 245B (Rev. 06/05) Criminal Judgment

Attachment (Page 1) - Statement of Reasons - D. Massachusetts - 10/05

MICHAEL BERGDOLL DEFENDANT:

CASE NUMBER: 3 04 CR 30046 - 002 - MAP

DISTRICT: **MASSACHUSETTS** 

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П

# STATEMENT OF REASONS

1	CC	COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT									
	Α		The court adopts the presentence investigation report without change.								
	В		The court adopts the presentence investigation report with the following changes.  (Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)  (Use Section VIII if necessary.)								
		1	Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or specific offense characteristics):								
			SEE NEXT PAGE								
		2	Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):								
		3	Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations).								
		4	Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):								
	С		The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.								
П	CC	DURT	FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)								
	Α	$\checkmark$	No count of conviction carries a mandatory minimum sentence.								
	В		Mandatory minimum sentence imposed.								
	С		One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on								
			findings of faet in this case								
			substantial assistance (18 U.S.C. § 3553(e))								
			the statutory safety valve (18 U.S.C. § 3553(f))								
111	C	OURT	DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):								
			ense Level:								
	Cr	iminal	History Category: I								
			ment Range: 33 to 41 months and Release Range: 3 to 5 years								
		ne Rang	ge: \$ 7,500 to \$ 3,000,000								
		Fine	e waived or below the guideline range because of inability to pay.								

Paragraph 273 should read: Base Offense Level: U.S.S.G. § 2S1.1(a)(1) indicates that the base offense level is the total offense level determined from the underlying offense, which in this instance is Wire Fraud, governed by U.S.S.G. § 2B1.1:

U.S.S.G. § 2B1.1(a) assigns a base offense level of 6 \_6

U.S.S.G. § 2B1.1(b)(1)(H) states that, if the loss amount exceeded \$400,000, but was less than \$1,000,000, a 14-level increase is applied. In the instant matter, as the defendant is responsible for approximately \$1,000,000 in loss, the enhancement is applied.

U.S.S.G. §2B1.1(b)(2)(A)(i) states that, if the offense involved more than 10, but less than 50 victims, a 2-level increase is applied. As the instant matter involves a number of victims in that range, the enhancement is applied.  $\pm 2$ 

	<b>Base Offense Level:</b>	<u>22</u>
Paragraph 278 should read:	Adjusted Offense Level (subtotal):	<u>23</u>
Paragraph 280 should read:	Total Offense Level:	20

Paragraph 317 should read: Guideline Provisions: Based upon a Total Offense Level of 20 and a Criminal History Category of I, the guideline imprisonment range is 33 to 41 months.

AO 245B (05-MA) (Rev. 06/05) Criminal Judgment Attachment (Page 2) — Statement of Reasons - D. Massachusetts - 10/05

DEFENDANT: MICHAEL BERGDOLL Judgment — Page of

CASE NUMBER: 3 04 CR 30046 - 002 - MAP

DISTRICT: MASSACHUSETTS

I

### STATEMENT OF REASONS

V	ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)													
	A	<b>₽</b>	The sentence is within an advisory g	uideli	uideline range that is not greater than 24 months, and the court finds no reason to depart.									
	В		The sentence is within an advisory g (Use Section VIII if neessary.)	uideli	ne range	that is greater than 24 months, and th	e speci	fic senten	ce is imposed for these reasons.					
	С		The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual.  (Also complete Section V.)											
	D		The court imposed a sentence outsid	e the	advisory	senteneing guideline system. (Also cor	nplete	Section V	I.)					
,	DE	DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)												
	A													
	В	Dep	arture based on (Check all that a	pply	.):									
		!	<ul> <li>         □ 5K1.1 plea agreemento           □ 5K3.1 plea agreemento           □ binding plea agreemento           □ plea agreement for d         □ plea agreement for d         □ plea agreemento           □ plea ag</li></ul>	nt bas nt bas ent fo epart	sed on the sed on E or depar ture, wh	and check reason(s) below.): he defendant's substantial assista Early Disposition or "Fast-track" ture accepted by the court ich the court finds to be reasonal e government will not oppose a co	Progr ble		ture motion.					
	Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):  5K1.1 government motion based on the defendant's substantial assistance  5K3.1 government motion based on Early Disposition or "Fast-track" program  government motion for departure  defense motion for departure to which the government did not object  defense motion for departure to which the government objected													
		3	Other					_						
						notion by the parties for departur	e (Ch	eck reas	on(s) below.):					
	С		eason(s) for Departure (Check al											
	4A1. 5H1. 5H1. 5H1. 5H1. 5H1. 5H1.	1 A 2 E 3 M 4 P 5 E 6 F	criminal History Inadequacy Age Education and Vocational Skills Mental and Emotional Condition Chysical Condition Comployment Record Family Ties and Responsibilities Military Record, Charitable Service, Good Works Aggravating or Mitigating Circumstances		5K2.2 Physical Injury   5   5K2.3 Extreme Psychological Injury   5   5K2.4 Abduction or Unlawful Restraint   5   5K2.5 Property Damage or Loss   5   5K2.6 Weapon or Dangerous Weapon   5   5K2.7 Disruption of Government Function   5   5K2.8 Extreme Conduct   5   5K2.9 Criminal Purpose   5   5K2.10 Victim's Conduct   5   5				5K2.13 Diminished Capacity  5K2.14 Public Welfare  5K2.16 Voluntary Disclosure of Offense  5K2.17 High-Capacity, Semiautomatic Weapon SK2.18 Violent Street Gang					

AO 245B ( 05-MA) (Rev. 06/05) Criminal Judgment Attachment (Page 3) — Statement of Reasons - D. Massachusetts 10/05

DEFENDANT: MICHAEL BERGDOLL Judgment — Page of

CASE NUMBER: 3 04 CR 30046 - 002 - MAP

DISTRICT: MASSACHUSETTS

IKK		MASSACHUSETTS								
		STATEMENT OF REASONS								
		ERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM apply.)								
A The sentence imposed is (Check only one.):  ☐ below the advisory guideline range ☐ above the advisory guideline range										
В	Sentence imposed pursuant to (Check all that apply.):									
	!	Plea Agreement (Check all that apply and check reason(s) below.):  binding plea agreement for a sentence outside the advisory guideline system accepted by the court  plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable  plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system								
	2	Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):  government motion for a sentence outside of the advisory guideline system  defense motion for a sentence outside of the advisory guideline system to which the government did not object defense motion for a sentence outside of the advisory guideline system to which the government objected								
	3	Other  Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s) below.):								
C	Reason(	(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)								
	to ref   to aff   to pro   (18 U   to ave	ature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)  Rect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))  Ford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))  Solution the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))  Solvide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner U.S.C. § 3553(a)(2)(D))  Solid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))  Solid crestitution to any victims of the offense (18 U.S.C. § 3553(a)(7))								
	(Ch A B	Check all that  A The sen								

D Explain the facts justifying a sentence outside the advisory guideline system. (UseSection VIII if necessary.)

of

Judgment --- Page

Attachment (Page 4) — Statement of Reasons - D. Massachusetts - 10/05

MICHAEL BERGDOLL **DEFENDANT:** 

3 04 CR 30046 - 002 - MAP

CASE NUMBER: DISTRICT:

MASSACHUSETTS

### STATEMENT OF REASONS

VII	cot	J <b>R</b> T i	DETE	RMINATIO	ONS OF	RESTITUTI	ON						
	A		Resti	itution Not A	pplicable	·.							
	В	Tota		ount of Restit	• •	318,331.00		_					
	С	Rest	itution	not ordered	(Check o	only one.):							
		1			s for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).								
		2	i	ssues of fact and	d relating th	em to the cause	or amount of th	ne victims' loss	es would complie	tion is not ordered ate or prolong the sentencing proce	sentencia	ng process	to a degree
		3		ordered because	the compli		ngation of the s	entencing proc	ess resulting fron	ed by the sentencing of	~ ~		
		4		Restitution is no	t ordered fo	or other reasons.	(Explain.)						
VIII	AÐI	DITIC				d for these rea				ble.)			
			Sec			IVII of the St	tatement of	Reasons for	m must be cor	npleted in all f	elony ca	ases.	
Defe	ndant	's Soc	. Sec.	No.:	00-3487				Date of Im	position of Jud 7	lgment	$\wedge$	
Defe	ndant	's Dat	e of B	Birth:	0/65			0	MI	den Ol	2	Por	m
Defe	ndant	's Res	sidenc	C Audicss.	10 Beechwe Wilbraham,	ood Dr. MA 01095		١	Signature of MICHAEL A		<u> </u>	U.S. D	ISTRICT JUD
Defe	ndant	's Ma	iling A	Address:	SAME			,		Title of Judge	<u>/·2</u>	4.0	